

AMENDED IN ASSEMBLY JUNE 27, 1996

AMENDED IN SENATE MAY 13, 1996

SENATE BILL

No. 1907

Introduced by Senator O'Connell

February 23, 1996

An act to amend Section 16081 of the Probate Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1907, as amended, O'Connell. Trusts: power of beneficiary.

Existing law requires a person who is a beneficiary of a trust and who holds a power to take or distribute income or principal to or for his or her benefit pursuant to a standard to exercise that power reasonably and in accordance with the standard. Existing law provides that, in any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

This bill would revise these provisions to, among other things, provide that, unless a broader power is intended by express reference to these provisions, this beneficiary may take or distribute income or principal to or for his or her benefit only for his or her health, education, support, or maintenance, as provided. The bill would provide that its changes would apply retroactively to trusts meeting certain criteria, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 16081 of the Probate Code is
2 amended to read:

3 16081. (a) Subject to the additional requirements of
4 subdivisions (b), (c), and (d), if a trust instrument
5 confers “absolute,” “sole,” or “uncontrolled” discretion
6 on a trustee, the trustee shall act in accordance with
7 fiduciary principles and shall not act in bad faith or in
8 disregard of the purposes of the trust.

9 (b) Notwithstanding the use of terms like “absolute,”
10 “sole,” or “uncontrolled” by a settlor ~~or, in the case of a~~
11 ~~testamentary trust,~~ or a testator, a person who is a
12 beneficiary of a trust that permits the person, either
13 individually or as trustee or cotrustee, to make
14 discretionary distributions of income or principal to or for
15 the benefit of himself or herself pursuant to a standard,
16 shall exercise that power reasonably and in accordance
17 with the standard.

18 (c) Unless a settlor ~~or, in the case of a testamentary~~
19 ~~trust,~~ or a testator clearly indicates that a broader power
20 is intended by express reference to this subdivision, a
21 person who is a beneficiary of a trust that permits the
22 person, as trustee or cotrustee, to make discretionary
23 distributions of income or principal to or for the benefit
24 of himself or herself may exercise that power in his or her
25 favor only for his or her health, education, support, or
26 maintenance, ~~as described in~~ *within the meaning of*
27 Sections 2041 and 2514 of the Internal Revenue Code.
28 Notwithstanding the foregoing and the provisions of
29 Section 15620, if a power to make discretionary
30 distributions of income or principal is conferred upon two
31 or more trustees, the power may be exercised by any
32 trustee who is not a ~~—beneficiary current permissible~~
33 ~~beneficiary of that power;~~ and provided further that if
34 there is no trustee who is not a ~~—beneficiary current~~
35 ~~permissible beneficiary of that power,~~ any party in

1 interest may apply to a court of competent jurisdiction to
2 appoint a trustee who is not a ~~beneficiary~~ *current*
3 *permissible beneficiary of that power*, and the power may
4 be exercised by the trustee appointed by the court.

5 (d) Subdivision (c) does not apply to either of the
6 following:

7 (1) Any power held by the settlor of a revocable or
8 amendable trust.

9 (2) Any power held by a settlor's spouse ~~or, in the case~~
10 ~~of a testamentary trust, or~~ a testator's spouse who is the
11 trustee of a trust for which a marital deduction, as defined
12 in Section 21520, has been allowed.

13 (e) Subdivision (c) applies to any of the following:

14 (1) Any trust executed *on or* after January 1, 1997.

15 (2) Any testamentary trust created under a will
16 executed *on or* after January 1, 1997.

17 (3) Any irrevocable trust created under a document
18 executed before January 1, 1997, or any revocable trust
19 executed before that date if the settlor was incapacitated
20 as of that date, unless all parties in interest elect
21 affirmatively not to be subject to the application of
22 subdivision (c) through a written instrument delivered to
23 the trustee. That election shall be made on or before the
24 latest of January 1, 1998, three years after the date on
25 which the trust ~~becomes~~ *became* irrevocable, or, in the
26 case of a revocable trust where the settlor ~~is~~ *was*
27 incapacitated, three years after the date on which the
28 settlor ~~becomes~~ *became* incapacitated.

29 (f) Notwithstanding the foregoing, the provisions of
30 subdivision (c) neither create a new cause of action nor
31 impair an existing cause of action that, in either case,
32 relates to any power limited by subdivision (c) ~~and~~ that
33 was exercised before January 1, 1997.

34 (g) For purposes of this section, the term "party in
35 interest" means any of the following persons:

36 (1) If the trust is revocable and the settlor is
37 incapacitated, the settlor's legal representative under
38 applicable law, or the settlor's attorney-in-fact under a
39 durable power of attorney that is sufficient to grant the

1 authority required under subdivision (c) *or* (e), as
2 applicable.

3 (2) If the trust is irrevocable, each trustee, each
4 beneficiary then entitled or authorized to receive income
5 distributions from the trust, or each remainder
6 beneficiary who would be entitled to receive notice of a
7 trust proceeding under Section 15804. Any beneficiary
8 who lacks legal capacity may be represented by the
9 beneficiary's legal representative, attorney-in-fact under
10 a durable power of attorney that is sufficient to grant the
11 authority required under subdivision (c) *or* (e), as
12 applicable, or in the absence of a legal representative or
13 attorney-in-fact, a guardian ad litem appointed for that
14 ~~purpose in a proceeding under Section 17200.~~ *purpose.*

